

RECORDING REQUESTED

William F. Bottoms and Mary A. Bottoms,
Trustees, The Bottoms Family 1989 Trust
61 Laurel Lane
El Sobrante, California 94803

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Northern California
Coastal Cleanup Operations Branch
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attention: Barbara J. Cook, P.E., Chief



CONTRA COSTA Co Recorder Office
STEPHEN L. WEIR, Clerk-Recorder

DOC- 2000-0049236-00

Check Number

M, MAR 13, 2000 09:23:48

CER \$39.00 MIC \$1.00 MOD \$17.00

REC \$21.00 TCF \$15.00

Ttl Pd \$94.00

Nbr-0000831771

lrc/R9/1-17

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

(Health and Safety Code section 25355.5)

ENVIRONMENTAL RESTRICTION

(Civil Code section 1471(c))

A Portion of Seacliff Marina Site

Utility Parcel

Contra Costa County

This Covenant and Agreement ("Covenant") is made by and between The Bottoms Family 1989 Trust, William F. Bottoms and Mary A. Bottoms, Trustees, (the "Covenantor"), the current owner of property situated in Richmond, County of Contra Costa, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties",

hereby agree pursuant to Civil Code section 1471(c) and H&SC section 25355.5 that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately 10,573 square feet is more particularly described and depicted in Exhibit "A" attached hereto and incorporated herein by this reference. The Property is located in the area now generally bounded by Brickyard Cove Road on the south, Seacliff Drive on the east, and the Seacliff Estates development on the north and west in the County of Contra Costa, State of California.

1.02. The Property is a portion of the Seacliff Marina Site ("Site", Figure 1). The Site was used for shipbuilding, ship repair, ship scrapping, and metal recycling. Past activities have contaminated soil at the Site. Contaminants detected in the soil included asbestos, polychlorinated biphenyls, polycyclic aromatic hydrocarbons, total petroleum hydrocarbons and heavy metals (antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, mercury, molybdenum, nickel, vanadium and zinc). These contaminants are above the health based cleanup levels established for the Site.

1.03. Covenantor remediated the Site under the supervision and authority of the Department. The Site was remediated pursuant to a Remedial Action Plan prepared and approved pursuant to Chapter 6.8 of Division 20 of the Health and Safety Code. The Department circulated the Remedial Action Plan (RAP), which contains a summary of the Final

Documentation of Recommended Remedial Cleanup Goals for Soils and Sediments Report, together with a negative declaration pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq. for public review and comment. The Remedial Action Plan and the negative declaration were approved by the Department on February 15, 1995. The RAP was implemented between April 21, 1998 and November 15, 1998. Affected soils exceeding health-based cleanup levels remain on the Property at depths of five (5) to fourteen (14) feet below the ground surface. Soil cleanup levels were developed in accordance with the potential use of the Site including residential and commercial. The contaminants are covered by five (5) to fourteen (14) feet or more of clean fill. Because hazardous substances, as defined in H&SC section 25316, which are also hazardous materials as defined in H&SC section 25260, including asbestos, polychlorinated biphenyls, polycyclic aromatic hydrocarbons, total petroleum hydrocarbons and heavy metals (antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, mercury, molybdenum, nickel, vanadium and zinc) remain in the soil on the Property under five (5) to fourteen (14) feet or more of clean fill, the Department concluded that a deed restriction that restricts the use of the Property is required as part of the remediation at the Site.

1.04. Based on the final Documentation of Recommended Remedial Cleanup Goals for Soils and Sediments Report, the Department concluded that the Property, as remediated, subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment. The Department also concluded that the Property does not present any risk that would require any other property to be restricted in its use and nothing in this Covenant limits the use of any property adjacent to the Property.

ARTICLE II
DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III
GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants: Pursuant to H&SC section 25355.5, this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property.

3.04. Incorporation into Deeds and Leases: The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property: The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV
RESTRICTIONS

4.01. Prohibited Uses: The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management.

- (a) No activities that will disturb the soil below a depth of five (5) feet (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without a Soil Management Plan and Health and Safety Plan approved by the Department.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating on the Property that will disturb the soil below a depth of five (5) feet.

4.03. Prohibited Activities: The following activities shall not be conducted at the Property:

- (a) Raising of food (cattle, food crops).

- (b) Drilling for drinking water, oil, or gas without prior written approval by the Department.

4.04. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.05. Permitted Uses. The Property may be used for any purpose that does not conflict with the prohibitions on use set forth in this Covenant including passive recreational use, use as a park, or construction of a homeowners' association meeting room and clubhouse provided that no child day care or pre-school or other use that would conflict with any Restriction herein is conducted in such facility.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any Improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas) constructed or placed upon any portion of the Property in violation of the Restrictions. This Covenant shall be enforceable by the Department pursuant to Health & Safety Code Division 20, Chapter 6.5, Article 8 (commencing with section 25180).

ARTICLE VI
VARIANCE TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02. Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03. Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01. No Dedication Intended Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Contra Costa within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: 1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or 2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: The Bottoms Family 1989 Trust
William F. Bottoms and Mary A. Bottoms, Trustees
61 Laurel Lane
El Sobrante, California 94803

To DTSC: Department of Toxic Substances Control
Northern California - Coastal Cleanup Operations Branch
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attention: Barbara J. Cook, P.E. Chief

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06. Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: THE BOTTOMS FAMILY 1989 TRUST

By: W F Bottoms
William F. Bottoms, Trustee

Date: 2/17/00

By: Mary A. Bottoms, Trustee
Mary A. Bottoms, Trustee

Date: 2-17-00

Department of Toxic Substances Control

By: Barbara J. Cook
Barbara J. Cook, P.E. Chief,
Northern California - Coastal Cleanup Operations Branch

Date: 2-23-2000

STATE OF CALIFORNIA

COUNTY OF ALAMEDA

On this 23rd day of February, in the year 2000,

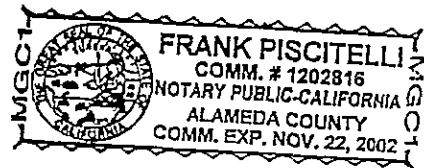
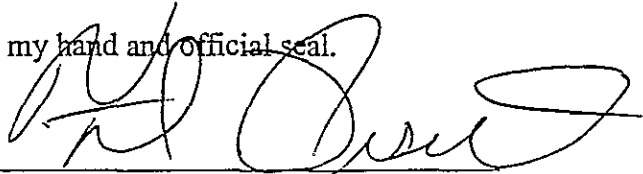
before me Frank Piscitelli, personally appeared

Barbara Jean Cook

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

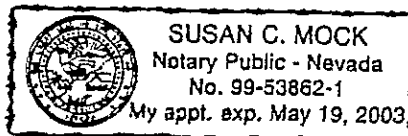


Nevada
STATE OF ~~CALIFORNIA~~)
COUNTY OF Clark)

On this 17 day of February, in the year 2000,
before me William F. Bottoms & Mary A. Bottoms, personally appeared

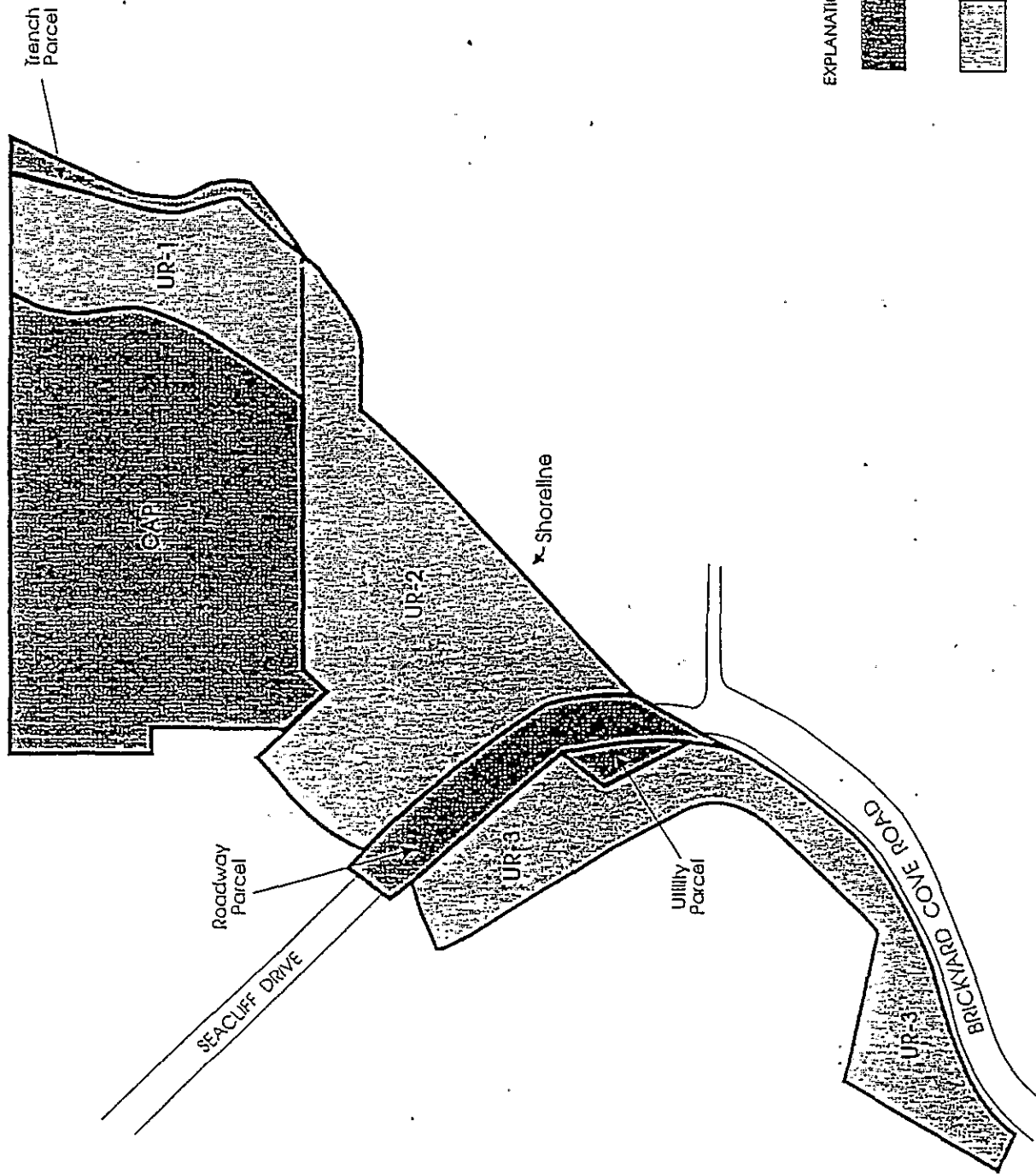
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature Susan C. Mock

EXHIBIT A



Scale: 1" = ± 225'

December 1998



FUTURE LAND USE

Seaciff Marina

Figure 1

Project 2044

December 8, 1998
Job No. 81129

UTILITY PARCEL

EXHIBIT "A"

All that certain real property situate in the City of Richmond, County of Contra Costa, State of California, described as follows:

COMMENCING at a point on the southerly line of Parcel "A", as said parcel is shown on the Parcel Map of Subdivision MS 761-89, filed February 1, 1990, in Book 144 of Parcel Maps at Page 46, Contra Costa County Records, said point also lying on the northerly line of Seacliff Drive, at the westerly end of the course dimensioned as "North 49°45'00" East, 557.88' TOTAL" on said map (144 PM 46);

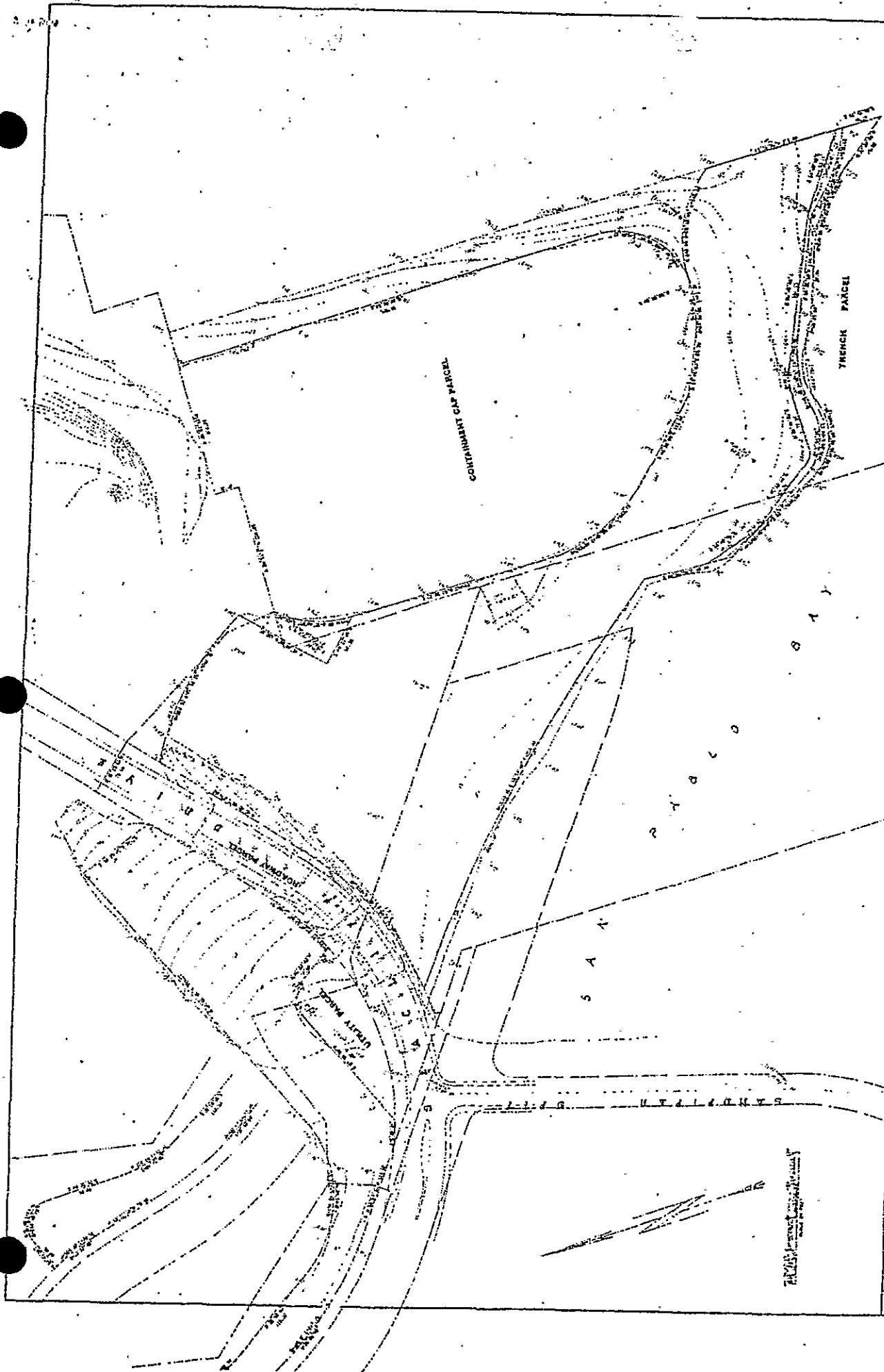
THENCE leaving said Point of Commencement along said northerly line of Seacliff Drive along a curve to the right, having a radius of 315.00 feet, whose center bears North 40°15'00" West, through a central angle of 16°19'00" for an arc length of 89.71 feet to the Point of Beginning;

THENCE leaving said Point of Beginning, continuing along said northerly line along a curve to the right, having a radius of 315.00 feet, through a central angle of 41°47'45" for an arc length of 229.78 feet;

THENCE leaving said northerly line North 67°30'00" East, 198.90 feet;

THENCE South 32°20'00" East, 76.00 feet to the Point of Beginning.

Containing an area of 10,573 square feet, more or less.



SEACLIFF PROPERTIES

DeBolt Civil Engineering
 11100 1st Avenue, Suite 100
 Seattle, WA 98148
 Phone: (206) 461-1111
 Fax: (206) 461-1112



PROJECT: Seaclyff Properties
 SHEET: 1 of 1
 DATE: 10/1/01
 DRAWN BY: J. DeBolt
 CHECKED BY: J. DeBolt

SCALE: 1" = 100' (Horizontal)
 1" = 20' (Vertical)